

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARK AYOTTE, KEN MAUER, and JASON :
PHILLIPS,

:
Plaintiffs,

:
- against -

:
THE NATIONAL BASKETBALL :
ASSOCIATION and NBA SERVICES CORP.,

:
Defendants.

:
ORDER

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22-CV-9666 (VSB) (RWL)

ROBERT W. LEHRBURGER, United States Magistrate Judge.

This order resolves Plaintiffs' letter motion at Dkt. 118 for leave to depose David Weiss for three hours. The request is denied. Plaintiffs have not demonstrated good cause for taking an eleventh deposition (beyond the allotted ten) and making their request on the last day of fact discovery. Plaintiffs were on notice from early on (from Defendants' responses to interrogatories) and repeatedly informed that Weiss was a witness with knowledge of relevant facts in this non-complex case. Plaintiffs noticed Weiss's deposition but then adjourned it only two days before its scheduled date, and took depositions of other witnesses in the meantime. Plaintiffs could have asked questions of those other witnesses – rather than waiting until the tenth deposition (of Commissioner Silver) – about the subject matter that elicited further information from Commissioner Silver about Weiss's particular involvement. Nor has Plaintiff shown that Weiss has unique knowledge that could not have been obtained from other witnesses already deposed. Even though the Court limited the time permitted for the deposition of two defense witnesses such that Plaintiffs have not taken 70 hours of depositions, the reason

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for granting the protective orders in the first place was in part due to Plaintiffs' inefficient use of deposition time devoted to matters of little to no relevance. Moreover, the Federal Rules limit the number of depositions without regard to hours used. Under the circumstances, the Court finds that allowing the deposition would not be consistent with Fed. R. Civ. P. 26(b). See Fed. R. Civ. P. 30(a)(2)(A)(i) (court must grant leave for exceeding 10-deposition limit to the extent consistent with 26(a) and (b)); Fed. R. Civ. P. 26(b)(2)(C)(court must limit discovery where, inter alia, "the party seeking discovery has had ample opportunity to obtain the information by discovery in the action").

The Clerk of Court is respectfully directed to terminate the letter motion at Dkt. 118.

SO ORDERED.



ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: February 12, 2024
New York, New York

Copies transmitted this date to all counsel of record.